

FINANCE COMMISSION OF TEXAS

MEETING DATES.....June 15, 2012

MEETING LOCATIONTexas Capitol Extension
1100 Congress Avenue
Hearing Room E2.028
Austin, Texas

CONTACT INFORMATION.....Phone: (512) 936-6222
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FUTURE MEETING DATESJune 15, 2012
August 17, 2012
October 19, 2012
December 14, 2012

**** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. TEX. FIN. CODE §11.106.**

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify Tammy King Wooten several days prior to the meeting using the contact information above by mail, telephone, or email.

AGENDA
Finance Commission of Texas
STUDY COMMITTEE MEETING

Thursday, June 14, 2012
2:30 p.m.

Hearing Room E2.028, Texas Capitol Extension
Austin, Texas 78701

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

- A. Review and Approval of Minutes of the April 20, 2012, Study Committee Meeting.
- B. Discussion of and Possible Vote to Take Action on the Report on the Finance Commission Study of Fees, Costs, Interest, and Other Expenses Charged in Connection with the Transfer of Property Tax Liens.
- C. Discussion of and Possible Vote to Adopt the Finance Commission of Texas Ethics Policy.

NOTE: The Study Committee may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify Tammy King Wooten, Finance Commission of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

MINUTES OF THE

Finance Commission Study Committee Meeting

Friday, April 20, 2012

The Study Committee of the Finance Commission of Texas met Friday, April 20, 2012, in Hearing Room E2.028, Texas Capitol Extension, 1100 N. Congress Avenue, Austin, Texas.

Members in attendance:

Darby Byrd, Study Committee Chair
Paul Plunket, Study Committee Member
Larry Patton, Study Committee Member

Members absent:

Victor Leal, Study Committee Member

Others in attendance:

Bill White, Finance Commission Chair
Susan Burton, Finance Commission Member
Stacy London, Finance Commission Member
Lori McCool, Finance Commission Member
Jonathan Newton, Finance Commission Member
Jay Shands, Finance Commission Member
Doug Foster, Executive Director to the Finance Commission and Commissioner, Texas Department of Savings and Mortgage Lending (SML)
Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)
Bob Bacon, Deputy Commissioner, Texas Department of Banking (DOB)
Jim Crowson, Assistant Attorney General, Office of the Attorney General

Study Committee Chair Darby Byrd announced a quorum was present, with Committee Members (Mr. Plunket and Mr. Patton) present and called the meeting to order at 8:45 a.m.

A. Review and Approval of Minutes of the Thursday, February 16, 2012, Study Committee Meeting.

Larry Patton made a motion to approve the minutes of the February 16, 2012, Study Committee meeting. Paul Plunket seconded and the minutes were adopted.

B. Progress Report on the Finance Commission Study of Fees, Costs, Interest, and Other Expenses Charged in Connection with the Transfer of Property Tax Liens.

Committee Chair Byrd opened by providing an overview of the Property Tax Loan Study Report. Commissioner Pettijohn provided a summary of the data collection phase of the study. She noted that in terms of the loan samples the agency was in excess of 90% of completion regarding this portion of the survey.

Commissioner Pettijohn continued with the Property Tax Loan Study Executive Summary Outline and asked for any Commission Member feedback or modifications.

C. Discussion of and Possible Vote to Adopt Finance Commission of Texas Procedures Regarding Potential Conflict of Interest.

Jim Crowson, Assistant Attorney General, Office of the Attorney General presented background information regarding the Conflict of Interest procedures. He highlighted legislative information regarding the adoption of an ethics policy and procedures for other state agencies.

There was discussion regarding the proposed conflict of interest policy among Commission Members.

Paul Plunket made a motion to adopt the Finance Commission of Texas Procedures Regarding Potential Conflict of Interest including the language that is bolded, underlined and italicized in the draft document. Larry Patton seconded and the motion was adopted.

Commission Member Plunket made a motion that the Study Committee recommend to the Finance Commission that the Study Committee be given the responsibility for developing an ethics policy related to the Conflict of Interest policy for the Finance Commission and agency heads. Larry Patton seconded and the motion was adopted.

There being no further business, Committee Chair Darby Byrd adjourned the meeting of the Study Committee of the Finance Commission on Friday, April 20, 2012, at 9:02 a.m.

Darby Byrd, Chair of the Study Committee
Finance Commission of Texas

Doug Foster, Executive Director of the
Finance Commission of Texas

Tammy King Wooten, Executive Assistant
Finance Commission of Texas

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FINANCE COMMISSION OF TEXAS



LEGISLATIVE REPORT PROPERTY TAX LENDING STUDY

June 2012

Prepared by
Office of Consumer Credit Commissioner

The Office of Consumer Credit Commissioner (OCCC) welcomed the opportunity to prepare this report and extends its appreciation to those industry stakeholders, consumer advocates, trade associations, and agency staff members who contributed to development of the report and analysis of data and findings contained within.

The OCCC would like to thank Dr. Lloyd Potter, Texas State Demographer, for his assistance in developing the methodology used to conduct the study.

Questions regarding the study or its findings may be directed to the OCCC by contacting us at 512-936-7652 or info@occc.state.tx.us.

A handwritten signature in black ink, reading "Leslie J. Petty". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Consumer Credit Commissioner

The following members of the Office of Consumer Credit Commissioner performed the research and prepared the report:

Karl Hubenthal

Eric Fancher

Huffman Lewis

William Purce

Dennis Love

Summary of Findings

Senate Bill 762, Acts of the 82nd Legislature, Regular Session, 2011, mandated that the Finance Commission of Texas (Finance Commission) study the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with the transfer of property tax liens and the payoff of loans secured by property tax liens. The Finance Commission has collected and analyzed current and historical data in an effort to provide a clear picture of the costs of these credit products.

A summary of the study findings related to the types and costs of fees charged to property tax loan borrowers in connection with property tax loans is provided in the tables below. The report provides an overview of the property tax lending industry in Texas and discusses the findings and methodology of the study of the fees, costs, and charges to borrowers associated with property tax loans.

Trends Identified CY2010 to CY2011	Data Provided by Industry Participants via Questionnaire
<ul style="list-style-type: none"> Decline in number of loans made 15.34% increase in dollar value of loans made 38.15% increase in average loan amount Foreclosures rose from 152 in CY2010 to 204 during CY2011 <i>(Foreclosure rate of 1 out of 150 properties for CY2011, as based on number of year-end receivables)</i> 	<ul style="list-style-type: none"> 85.59% of 2011 transfers involved residential properties <ul style="list-style-type: none"> Avg. Transfer Amount \$8,809.77 Avg. Closing Costs \$865.52 Avg. Interest Rate 14.37% 14.41% of 2011 transfers involved commercial properties <ul style="list-style-type: none"> Avg. Transfer Amount \$35,006.25 Avg. Closing Costs \$1,545.77 Avg. Interest Rate 14.20%
Current Loan Characteristics	Data Collected through OCCC Examination & Supervision Activities
<ul style="list-style-type: none"> Interest rates for both commercial and residential properties are at a 4-year low Residential closing costs are at a 4-year low for both dollar amounts and percentages of tax lien transfer amounts Commercial closing costs are at a 4-year low as a percentage of tax lien transfer amounts 62.28% of borrowers had pre-existing mortgage 43.05% of paid property tax loans were paid by a mortgage company 	<ul style="list-style-type: none"> 99.36% of loans heading towards foreclosure had additional servicing fees averaging \$2,384.91 92.21% of loans with extreme delinquency^a had additional servicing fees averaging \$923.92 61.64% of loans <i>without</i> extreme delinquency had additional servicing fees averaging \$274.16 Largest expense was foreclosure costs <ul style="list-style-type: none"> Average: \$1,544.22 Median: \$1,200^b Most common fees assessed were internal collection fees <ul style="list-style-type: none"> Affected 50.64% of accounts without extreme delinquency

Table 1: Summary of Property Tax Lien Lending Report, 2012.

^a For this study, extreme delinquency is classified as contractual delinquency of 90+ days

^b Figure includes active loans where additional fees may be assessed

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Summary of Findings

Introduction

Sections

1. Industry Overview

2. Regulatory Background

3. Data Collection and Analysis

4. Summary and Recommendations

Introduction

This report provides an overview of the property tax lending industry in Texas as well as the findings and methodology of the study of the fees, costs, and charges to borrowers associated with property tax loans.

Senate Bill 762, Acts of the 82nd Legislature, Regular Session, 2011, required the Finance Commission to study the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with the transfer of property tax liens and the payoff of loans secured by property tax liens. The Finance Commission has collected and analyzed current and historical data to provide an understanding of the types and costs of fees charged to property tax loan borrowers in connection with obtaining the loan and after closing.

Study findings provide details of allowable charges and more specifically the actual occurrence of charges incurred by the borrowers. Through examination of actual loans made, this study classifies the costs associated with property tax loans characterized by the paying habits of actual borrowers (non-problem, problem, and foreclosure loans).

This report is divided into four sections:

- An overview of the industry, including the purpose and proliferation of property tax loans.
- A background of regulatory requirements, transaction details, and the evolution of allowable costs.
- The results of the data collection for the questionnaire and survey administered for this study.
- A summary of findings and recommendations for future regulatory and legislative activities.

Industry Overview

While users of loans described in this study possess diverse characteristics; the purpose of the loan was for payment of property taxes owed on the property. Common types of property subject to property tax loans included in this study are shown in Table 2.

Real Property Category A	<p><u>Single-Family Residential</u></p> <p>Category A property includes single – family residential improvements and land on which they are situated. Typically, Category A properties are single-family homes on tracts of land or platted lots. They may or may not be within the city limits or in close proximity to a city. Even large tracts of land should be classified as Category A property when the use is residential. The use is residential when the land is primarily to enhance the enjoyment of the residence. Townhouses, condominiums, row houses and owner occupied duplexes are included in Category A. Mobile homes located on land owned by the occupant are classified as Category A property.¹</p>
Real Property Category F	<p><u>Commercial</u></p> <p>Category F property includes land and improvements associated with businesses that sell goods or services to the general public. Some examples of commercial businesses are: wholesale and retail stores, shopping centers, office buildings, restaurants, hotels and motels, gas stations, parking garages and lots, auto dealers, repair shops, finance companies, insurance companies, savings and loan associations, banks, credit unions, clinics, nursing homes, hospitals, marinas, bowling alleys, golf courses and mobile home parks.²</p>

Table 2: Classifications of most common properties subject to property tax loans, which are included in the Property Tax Lender Study, 2012. Additional less common property types were also examined.

Certain lenders in this industry operate within a niche market segment and make loans for delinquent property taxes on specific types of properties, while other lenders make loans regardless of property type. The underwriting standards tend to differ as well. Not all lenders use traditional methods such as recording and verifying the income or reviewing the credit history of the perspective borrower. Data was collected as part of the study to classify the percentage of borrowers reporting their income during the application process.

Fee Types

Internal Administrative Fees: Fees for providing a payoff statement, prepayment penalty fees, (commercial properties only), document copy fees, release-of-lien fee, and loan balance information fee.

Internal Collection Fees: Late payment fees and non-sufficient funds fees.

Other Fees no longer permissible under SB 762. Examples include: internal demand letters, 90-day mortgage notice fees, loan modification fees with no new taxes advanced, and payment processing fees.

Third-Party Bankruptcy Costs & Fees: Attorney fees related to bankruptcy filings, and court costs related to bankruptcy filings.

Third-Party Foreclosure Costs and Fees: Attorney fees related to foreclosure suit under Chapter 33, Texas Tax Code, attorney fees related to Rule 736 foreclosures, and court costs related to foreclosures.

Third-Party Other Costs and Fees: Recording fees for loan modification, abstract and title examination fees, and collateral protection insurance costs.

Definitions

In this study, the following terms are used and defined as follows:

Closing Costs: Costs incurred by a property tax lender from the time of application through the time of closing.

Commercial Property: Non-Residential Property Tax Loans.

Loans for properties that are not classified as Category A or Category E by the Property Classification Guide published by the Comptroller of Public Accounts.

Internal Collection Fees

Non-owner Occupied: Property not owned and used by the property owner for personal, family, or household purposes.

Owner Occupied Property: Residential property owned and used by the property owner for personal, family, or household purposes.

Questionnaire: Survey required from property tax lenders included as Appendix J of the 2012 Property Tax Lender Annual Report.

Residential Property: Residential Property Tax Loans.

Category A (Real Property: Single Family Residential), and

Homesteads designated as Category E (Real Property: Farm and Ranch Improvements) by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

Sampling Frames: Predetermined criteria for conducting the survey. For this report, the sampling frames are:

Non-Problem Loan: A property tax lien loan that has never been at least 90 consecutive days past due and that has never been in bankruptcy.

Problem Loan: A property tax lien loan that has at any point become at least 90 days delinquent or has been in bankruptcy.

Foreclosure Loan: A property tax lien loan in which the underlying property was in default to the point that a foreclosure sale notice had been posted by the court at any time during the loan.

Servicing Fees: Charges assessed to property tax borrowers after closing and generally not subject to negotiation.

Survey: Study conducted by OCCC examination staff from February 13, 2012, to May 12, 2012.

Total Tax Lien Transfer Amount: The total amount of money paid to a taxing unit by the property tax lender that includes taxes, interest, penalties, and collections costs.

Regulatory Background

On January 1 of each year, a tax lien is attached to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the actual taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property. A lien against the real property is automatic and is perfected without any further action by the taxing unit. A tax lien on real property tax takes priority over a homestead interest in the property and virtually all other liens or encumbrances on the property.

Fees Assessed by Tax Collector

In the collection of delinquent property taxes, a taxing unit can assess, charge, and collect penalties, interest and collection costs. By law, property taxes are considered due on January 1st of every year. On February 1st, penalty and interest charges begin accumulating.

Regular penalty charges are established by law³ and may be as high as 12% of the amount of the tax. On February 1st of the year that the taxes are due, a taxing unit may begin assessing a penalty of 6% of the amount of the tax. If a property owner does not

pay the tax after February 1st, the taxing unit can assess an additional penalty of 1% of the tax amount for each additional month. On July 1st of the year the taxes are due, a total penalty of 12% of the amount of the delinquent tax is due without regard to the number of months the tax has been delinquent.

A delinquent tax accrues interest at a rate of 1% for each month or portion of a month the tax remains unpaid. Interest payable under this section is to compensate the taxing unit for revenue lost because of the delinquency. A delinquent tax continues to accrue interest under this subsection as long as the tax remains unpaid, regardless of whether a

judgment for the delinquent tax has been rendered.⁴ Therefore, the annualized rate of interest is 12% per annum.

Private attorneys hired by taxing units to collect delinquent accounts can charge the property owners an additional penalty to cover their collection costs. This additional penalty or collection cost usually falls within the range of 15% to 20% of the amount of taxes, interest, and regular penalties.

Table 3 illustrates the assessment of penalties, interest and collection costs for delinquent taxes.

Regular Penalty, Interest, and Collection Fees for Delinquent Taxes				
On the first of each month:	Regular Penalty	Interest	Collection Costs Attorney's Fees	Total Added for the Month
February	6%	1%		7%
March	7%	2%		9%
April	8%	3%		11%
May	9%	4%		13%
June	10%	5%		15%
July	12%	6%	15 to 20%	33% to 38%
August		7%		34% to 39%
September		8%		35% to 40%
October		9%		36% to 41%
November		10%		37% to 42%
December		11%		38% to 43%
January of the following year		12%		39% to 44%

Table 3: Assessment of penalties, interest, and collection costs for delinquent taxes.

Based upon published information from taxing units, collection costs usually fall within the range of 15% to 20% of the amount of the total taxes, penalties, and interest. The collection costs shown in this table were assumed to be 20% of the amount of the tax

and did not include an amount calculated against the penalties and interest. The actual collection fee by a taxing unit may be greater than the amount shown below.

Table 4 illustrates the amount of regular penalties, interest and collection costs that will accumulate on a delinquent tax owed to a taxing unit for an original tax liability of \$8,000 due on January 1st. The table assumes that the property owner does not pay any

amount of the tax and that the regular penalties, interest, and collection costs will accrue on the full tax bill amount. Further, the collection costs are calculated at 20% of the tax amount.

Amount of Penalties, Interest and Collection Fees for a \$8,000.00 tax bill				
On the first of each month	Regular Penalty (a)	Interest (b)	Collection Costs (c)	Total Amount Due (a+b+c)
January 1st - Original Tax Bill Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 8,000.00
February	\$480.00	\$80.00	\$ 0.00	\$ 8,560.00
March	\$ 80.00	\$80.00	\$ 0.00	\$ 8,720.00
April	\$ 80.00	\$80.00	\$ 0.00	\$ 8,880.00
May	\$ 80.00	\$80.00	\$ 0.00	\$ 9,040.00
June	\$ 80.00	\$80.00	\$ 0.00	\$ 9,200.00
July	\$160.00	\$80.00	\$1,600.00	\$11,040.00
August	\$ 0.00	\$80.00	\$ 0.00	\$11,120.00
September	\$ 0.00	\$80.00	\$ 0.00	\$11,200.00
October	\$ 0.00	\$80.00	\$ 0.00	\$11,280.00
November	\$ 0.00	\$80.00	\$ 0.00	\$11,360.00
December	\$ 0.00	\$80.00	\$ 0.00	\$11,440.00
January of the following year	\$ 0.00	\$80.00	\$ 0.00	\$11,520.00

Table 4: Amount of penalties, interest and collection fees for an \$8,000 tax bill.

Available Payment Options for Paying Taxes to a Taxing Unit

Typically, most tax assessor-collectors send their tax bills to the property owner by October 1st of the preceding year before the taxes are due.⁵ For example, on October 1, 2012, a tax assessor-collector will send the tax bill to the property owner for taxes that are due on January 1, 2013. If the property owner determines that they will be unable

to pay the taxes in one lump sum before the date due, the property owner should contact the local tax assessor-collector to find out what payment options are available.

The available payment options on a local basis may include:

- *Discounts*, if property owner remits their taxes early.

- *Split payment of taxes*, allowing the property owner to pay half their taxes by November 30th and the remainder by June 30th without a penalty.
- *Partial payment of property taxes*.
- *Escrow agreements* for a special year-round account.
- *Work out contracts*, in lieu of paying taxes, for certain taxpayers doing certain duties.⁶

Most of the available payment options shown above are not required by law; therefore, these options may not be available to the property owner. Some of the available options are discussed in the following paragraphs.

Split Payment of Taxes

If approved by the governing body of a taxing unit, the tax collector may allow the property owner to pay their taxes in two installments. The property owner must pay, at least, one-half of the taxes before December 1st of the preceding year before the taxes are due and pay the remaining one-half of the taxes without penalty or interest before July 1st of the following year.⁷ In other words, for taxes that are due on January 1, 2013, the property owner must pay one-half of the taxes on or before November 30, 2012, and pay the remaining one-half of the taxes before July 1, 2013. If a tax collector collects the taxes for multiple taxing units, the split payment of taxes option may not be available for all of the taxing units, if any.

Installment Payments of Certain Homestead Taxes⁸

If the subject property is the homestead residence of an individual that is disabled or at least 65 years of age and qualify for the exemption (over 65 years old or disabled), the taxing unit must allow the individual the ability to pay the taxes in four installments, if requested. To obtain this payment plan, the property owner must

1. pay 25% of the taxes due on the property before the delinquency date of the taxes; and
2. provide written notice to the taxing unit that the person will pay the remaining taxes in installments.

The property owner must pay the remaining taxes in 3 equal installments that are due before:

1. April 1st of the year that the taxes are due;
2. June 1st of the year that the taxes are due; and
3. August 1st of the year that the taxes are due.

If the property owner fails to make one of the three remaining equal payments before the applicable date, the unpaid amount is delinquent and incurs a penalty of 6% and interest at a rate of 12% per annum.

Installment Payment Plan

The tax collector for a taxing unit may enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The agreement must be in writing and may not extend for a period of more than 36 months.⁹ Interest and penalties described above accrue on the unpaid balance during the period of the agreement.

Escrow Accounts

Although not required by law, a tax collector for a taxing unit may enter into a contract with a property owner under which the property owner deposits money into an escrow account maintained by the collector to provide for the payment of property taxes.¹⁰

Property Tax Loan

Section 32.06(a-2) of the Texas Tax Code permits a property owner to authorize a third party to pay the real property owner's property tax in exchange for a tax lien on the property, which is transferred to the third party from the taxing unit(s). This authorized, private third party pays the taxes of another and is referred to as a "property tax lender" or a "transferee." The loan that secures the transfer of a tax lien (taxes, penalties, interest, and collection costs charged by a taxing unit or its agent), reasonable closing costs, and interest is called a "property tax loan."

Section 351.002(2) of the Texas Finance Code defines a "property tax loan" as:

"an advance of money:

- (A) in connection with a transfer of lien under Section 32.06, Tax Code, or a contract under Section 32.065, Tax Code;

- (B) in connection with which the person making the transfer arranges for the payment, with a property owner's written consent, of property taxes and related closing costs on behalf of the property owner in accordance with Section 32.06, Tax Code; and
- (C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument."

Legislative History

In 1933, during the Great Depression, property tax lien transfers were first permitted by law (Vernon's ANN. TX. CIV. STAT., Article 7345a). The statutory framework of the law remained the same and was not revised for forty-six years.

In 1979, the Texas Legislature codified the previous law into Section 32.06 of the Texas Tax Code. From 1933 to August 31, 1995, most property tax lien transfers involved transfers from taxing units to the property tax owner's family members or employers. In 1995, the Texas Legislature made significant changes to Sections 32.06 of the Texas Tax Code and added Section 32.065 to make property tax transfers more viable. These changes included:

1. permitting non-judicial foreclosures under Section 51.002 of the Texas Property Code instead of only judicial foreclosures required under the previous laws;
2. increasing the interest rate permitted on property tax lien transfers from 10% per annum to 18% per annum; and
3. allowing property tax lien transferees to foreclose within one year if the contract between the owner of the property and the transferee contained a provision providing this authority.

In 2005, the 79th Texas Legislature made several additional changes to Sections 32.06 and 32.065 of the Texas Tax Code. These changes included:

1. limiting the transfer of a tax lien unless the taxes:

- a. were delinquent at the time of payment by the property tax lender; or
 - b. were not delinquent at the time of payment; however, the property was not subject to a recorded mortgage lien;
2. permitting reasonable closing costs on a property tax loan;
 3. permitting a property tax lender to assess, charge, and collect a reasonable fee for a payoff statement after the initial payment statement was provided;
 4. changing the right of redemption on a foreclosed property to be repurchased by the borrower or mortgage servicer as follows:
 - a. if the property was a residential homestead of the owner, 125% of the purchase price during the first year of the redemption period beginning from date the foreclosure deed is recorded;
 - b. if the property was a residential homestead of the owner, 150% of the purchase price during the second year of the redemption period beginning from date the foreclosure deed is recorded;
 - c. if the property was commercial, the right of redemption was limited to 180 days after the date on which the purchaser's deed was filed in the real property records; and
 5. requiring the property tax lender to provide written notice to the holders of all recorded liens on the property before foreclosure.

In 2007, the 80th Texas Legislature enacted the *Property Tax Lender License Act* that created Chapter 351 of the Texas Finance Code. For the first time, property tax lenders were required to obtain a license from the Office of Consumer Credit Commissioner. In addition to the *Property Tax Lender License Act*, the Texas Legislature enacted additional consumer protections as part of Senate Bill 1520. The additional changes required the Finance Commission to:

1. prescribe the form and content of a disclosure statement to be provided to a

property owner before the execution of a tax lien transfer;

2. adopt rules relating to the reasonableness of closing costs; fees, and other charges before the execution of a property tax loan;
3. establish the reasonable fee for filing or recording a release of lien on a property tax loan; and
4. establish the reasonable fee for a payoff statement that is requested after an initial payoff statement is provided.

Effective January 3, 2008, the Finance Commission promulgated the content and form of the disclosure statement. The disclosure statement, required by Section 32.06(a-4)(1) of the Texas Tax Code, contains numerous disclosures relating to the terms, limitations, restrictions, and other information for a property tax loan. One of the key statements on the disclosure form advises the property tax loan borrower that the property tax lender is permitted to and may assess reasonable closing costs and interest not to exceed 18%.

In addition to the disclosure statement, the Finance Commission established the maximum fees that can be charged for reasonable closing costs, recording a release of lien, and providing a payoff statement for a property tax loan (§§32.06(a-4)(2), 32.06(b), and 32.06(f-3), Texas Tax Code).

In 2009, the Texas Legislature required the Finance Commission to promulgate standardized forms used in a property tax loan – sworn document and a certified statement.

In 2011, the 82nd Texas Legislature enacted Senate Bill 762 that limited the type and amount of servicing (post-closing) fees that a property tax lender could assess, charge, or collect.¹¹

Property Tax Loan Documentation

Today, in order to properly document a property tax loan, a property tax lender must:

1. before the execution of a tax lien transfer, provide the property owner a written disclosure statement that explains the limitations, restrictions, and certain other information pertinent to a tax lien transfer;

2. obtain a sworn document, in writing, authorizing the transfer of the tax lien from the property tax borrower to the lender;
3. provide a copy of the sworn document obtained from the borrower to the taxing authority;
4. pay the applicable taxes, penalties, interest, and collection costs owed on the subject property;
5. obtain a certified statement of the transfer from the taxing authority attesting that all taxes, penalties, interest, and collection costs on the subject property have been paid by the lender;
6. not later than the 10th business day after the date the certified statement is received by the property tax lender, the lender must send a copy of the sworn document, by certified mail, to any mortgage servicer and holder of a recorded first lien encumbering the property;
7. have the property tax borrower sign a promissory note that contains:
 - a. the promise to pay;
 - b. the note rate (interest rate); and
 - c. the repayment terms.
8. have the property tax borrower sign a deed of trust, contract, security deed, or other security instrument;
9. provide the borrower a final itemization of the actual fees, points, interest, costs and charges that were charged at closing;
10. if the property is residential property owned and used by the property owner for personal, family, or household use, provide the borrower a right of rescission as described by Regulation Z,

Truth-in-Lending, 12 C.F.R. §226.23;
and

11. record the deed of trust or other security instrument and certified statement obtained from the taxing authority in the deed records of each county in which the property encumbered by the lien is recorded.

Permissible Fees on a Property Tax Loan

The permissible fees allowed on a property tax loan are reasonable closing costs, tax lien release fee, payoff or statement of payments fee, and servicing fees. These fees will be further described in the following sections of the study.

Closing Costs

As part of Senate Bill 1520, 80th Texas Legislature required the Finance Commission to adopt rules relating to the reasonableness of closing costs and other charges before the execution of a property tax loan.

In defining "closing costs" the Finance Commission indicated that the closing costs were limited to "costs incurred by a property tax lender from the time of application through the time of closing and sets limitations as to the total amounts of closing costs." The maximum reasonable closing costs are tied to the total amount of money paid by the property tax lender to the taxing unit(s) to secure the transfer of tax lien and is referred to as the "total tax lien payment amount." The maximum reasonable closing costs applies only to property tax loans that are secured by property designated as "Category A (Real Property: Single-Family Residential)" and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide, which is published by the Texas Comptroller of Public Accounts. Examples of the maximum amounts of reasonable closing costs and the types of closings costs that can be assessed, and the description of those costs, are provided in Tables 5 and 6, shown below and on the following page.

Maximum Reasonable Closing Costs for Property Tax Loans	
Total Tax Lien Payment Amount	Maximum Reasonable Closing Fee
< \$2,500	\$1,000
\$2,500 TO \$4,999.99	\$1,250
\$5,000 TO \$7499.99	\$1,500
\$7,500 TO \$9,999.99	\$1,750
> \$10,000	\$2,000 or 10% of the total tax lien payment amount, whichever is greater.

Table 5: Maximum reasonable closing costs as established within the Texas Administrative Code (7 TAC, §89.610)

Examples of Reasonable Closing Costs	
Type of Closing Cost	Description of Closing Cost
APPRAISAL FEE	Fee paid to a licensed real estate appraiser to determine the estimated market value of a house, condominium, commercial property, or other property.
INSPECTION FEE	Fee paid to determine the current physical condition of the property.
TITLE EXAMINATION FEE	Fee paid to examine all relevant records to confirm that the property tax borrower is the legal owner of the property and whether there are any liens or other claims outstanding against the property.
PROPERTY SURVEY FEE	Fee paid to licensed surveyor to determine the boundary lines, rights of way, easements and structures within or immediately surrounding the property.
FLOOD DETERMINATION FEE	Fee paid to determine whether the property is located in a flood zone.
DOCUMENT PREPARATION FEE	Fee paid to a licensed Texas attorney to prepare the loan and closing documents such as a promissory note and deed of trust.
CLOSING OR ESCROW FEE	Fee paid to a title company or escrow agent for its services in closing a loan on behalf of a lender.
TAX CERTIFICATE FEE	Fee paid to determine whether the taxes on a property have been paid for the current year and past several years.
CREDIT REPORT FEE	Fee paid to a consumer reporting agency to acquire a credit report. The credit report contains detailed information on a person's credit history experience with creditors and recent inquiries including the name and date of the company making the inquiry.
COURIER FEE	Fee paid to a courier company to send the legal documents to the closing agent.

Table 6: Examples of Reasonable Closing Costs.

Tax Lien Release Fee

When a tax lien is released (the loan has been paid-in-full), the property tax lender shall file a release with the county clerk of each county in which the property encumbered by the lien is located for recordation by the clerk and shall send a copy to the collector. The property tax lender may charge a reasonable fee for filing the release of lien. Effective March 6, 2008, the Finance Commission promulgated 7 Texas Administrative Code §89.602 to establish the maximum release a lien fee and the regulation reads as follows:

"(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a property tax lender may charge a property owner the following for filing the release:

- (1) the actual cost charged by the county clerk for filing the release;
 - (2) the actual cost of attorney's fees paid to an outside attorney who is not an employee of the property tax lender for preparing the release; and
 - (3) an administrative fee not to exceed \$35 for services related to filing provided by the property tax lender (e.g., costs to mail or deliver release to county clerk or taxing unit(s)).
- (b) Potential limitations on administrative fee. The administrative fee provided by subsection (a)(3) of this section may be limited by other law.
- (c) Maximum aggregate fee. The maximum aggregate fee for all of the items provided in subsection (a) of this section shall not exceed \$110."

Pay-off Statement Fee

A property tax lender may charge a reasonable fee for a payoff statement that is requested after the initial payoff statement has been provided at no cost.¹² A property tax lender may charge a fee not to exceed \$10 for providing each additional payoff

statement after an initial payoff statement has been provided.¹³

Servicing Fees

A property tax lender may only assess, charge, or collect certain servicing fees on property tax loans. The servicing fees are limited to the fees shown in Table 7.

Authorized Servicing Fees	
Type of Servicing Cost	Description of Servicing Costs
RELEASE OF LIEN FEE	Fee paid to a property tax lender for preparing and recording a release of lien in the deed records of each county in which the property is located.
PAYOFF STATEMENT FEE	Fee paid to the property tax lender for preparing a statement that gives the amount necessary to pay off the loan.
CURRENT BALANCE STATEMENT FEE	Fee paid to the property tax lender for a statement of the current balance owed on the property tax loan.
FORECLOSURE FEES	Fees paid to a licensed Texas attorney, who is a non-salaried employee of the property tax lender, for preparing the necessary legal documents to foreclose on a property tax loan lien.
BANKRUPTCY FEES	Fees paid to attorneys and court costs for services performed after the property owner files a voluntary bankruptcy petition.
COURT COST	Fees paid to a court for the filing of a lawsuit.
TITLE EXAMINATION FEE	Fee paid to examine all relevant records to confirm that the property tax borrower is the legal owner of the property and whether there are any liens or other claims outstanding against the property.
RETURN CHECK CHARGE	Processing fee paid to a property tax lender for a check that has been returned for non-sufficient funds (NSF).
COLLATERAL PROTECTION INSURANCE	Substitute insurance policy that covers losses to the property that is a result of a debtor's failure to provide evidence of insurance or failure to obtain or maintain insurance covering the collateral
PREPAYMENT PENALTY	Fee paid to a property tax lender because the borrower repaid the property tax loan prior to a specified period
RECORDING FEE	Fee paid to a county clerk's office to record a lien against the property in the deed records
COPY FEE	Fee paid to a property tax lender to provide copies of the loan documents and records
LATE CHARGE	An interest charge for a late payment.

Table 7: Authorized servicing costs as defined within Senate Bill 762, 82nd Texas Legislature.

Foreclosure Processes

The largest and most costly of servicing fees are foreclosure costs. In Texas, a property tax lender may foreclose the lien on a property tax loan by

either: (1) judicial foreclosure or (2) a non-judicial foreclosure after the lender has obtained a court order for foreclosure under Rule 736 of the Texas Rules of Civil Procedure.¹⁴

Judicial Foreclosure

Under a judicial foreclosure, a property tax lender must file a lawsuit against the property owner. A judicial foreclosure, in most cases, takes longer than a non-judicial foreclosure under Rule 736. After a judicial hearing is conducted, a judge will decide whether to permit the foreclosure of the property. If the judge decides that the property tax lender has sufficient evidence to permit foreclosure, the court will issue a final judgment of foreclosure. This order indicates that the property may be sold at a public auction that is conducted by a sheriff or constable on the first Tuesday of the month. The sale must take place at the county courthouse in the county in which the land is located, or if the property is located in more than one county, the sale may be made at the courthouse in any county in which the property is located. The highest bidder at the foreclosure sale purchases the property subject to the right of redemption.

Non-Judicial Foreclosure

A non-judicial foreclosure requires numerous steps and notices. After default, the property tax lender must send, to the property owner and each holder of a recorded first lien on the property, a notice to cure the default by certified mail. The notice to cure the default must explain that the property owner is in default of the deed of trust or contract lien and give the debtor at least twenty (20) days to cure the default.

If the debtor does not cure the default, the property tax lender must send a "notice of intent to accelerate" and a "notice of acceleration" to the property owner and each holder of a recorded first lien on the property. Both notices must be sent by certified mail.

A notice of acceleration is a notice that advises the property owner and the holder of a recorded first lien that the entire balance of a property tax loan is due (payoff balance). After these notices have been sent and the property tax lender has verified that the property owner has not requested a deferral of taxes as authorized by Section 33.06 of the Texas Tax Code, the property tax lender must file an "Application for Order for Foreclosure under Texas Rules of Civil Procedure Rule 736" in the district court of the county where the real property is located. The clerk of the court will then issue a

separate citation for each respondent named in the application (property owner and any lienholders) and any occupant of the property. Each citation states that any response to the application is due by the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service. The clerk of the court will send both the citation and application by first class and certified mail to each respondent.

If a response is filed in writing, the court must hold a hearing after reasonable notice to the parties; discovery is not permitted for this proceeding. At the hearing, the property tax lender has the burden of proof, through affidavits on file or evidence presented at the hearing, to establish the grounds for granting the order seeking foreclosure.

If no response is received by the court by the due date, the property tax lender may file a motion and proposed order to obtain a default order granting the foreclosure.

The court may issue an order granting or denying the application for foreclosure upon conclusion of the hearing or receipt of a request for default order. Even if a court grants the order, a property tax borrower may still prevent the foreclosure by obtaining a temporary restraining order or filing for bankruptcy.

Additionally, the property tax lender must provide notice to the holder of a recorded preexisting lien at least sixty (60) days before the date of the proposed foreclosure.

Upon receipt of the order, the property tax lender must send a "notice of sale" that must:

1. be filed with the county clerk in the county in which the property is located;
2. be mailed to the property tax borrower and any first lienholders and;
3. be posted at the county court where any sale would occur.

The "notice of sale" must allow for a minimum of 21 days between the filing date and the date of sale of the property. The foreclosure sale must take place on the first Tuesday of the month in which the sale is to occur, be conducted between 10 a.m. and 4 p.m., and be conducted at the county courthouse. If the

first Tuesday of the month falls on a legal holiday, the sale is still to be conducted:

The trustee of the property will auction the property to the highest bidder. After the foreclosure sale, the trustee must issue a foreclosure deed to the purchaser of the property. If the property is sold for more than the amount owed on the property tax loan, the excess is deposited with the registry of the court; lienholders and the property tax borrower then may file an application with the court to obtain the excess proceeds. If the excess proceeds are not claimed after a specified period of time, they are forfeited to the state.

Property Redemption

Under both judicial and non-judicial foreclosures of a tax lien, the property owner or the mortgage servicer of a prior recorded lien may redeem the foreclosed property from the purchaser or the purchaser's successor.¹⁵

If the property was either the residence homestead of the owner or agricultural land, the right of redemption may be exercised on or before the second anniversary date on which the foreclosure deed was recorded.

The redemption price for the *first year* is currently comprised of:

- 125% of the purchase price,
- other costs permitted by Section 34.21 of the Texas Tax Code, and
- the legal judgment rate on that amount.

The redemption price for the *second year* is currently comprised of:

- 150% of the purchase price,
- other costs permitted by Section 34.21 of the Texas Tax Code, and
- the legal judgment rate on that amount.

If the property is commercial property, the right of redemption must be exercised not later than the 180th day after the foreclosure deed was recorded.

If a person redeems the property as permitted by law, the purchaser at the tax sale, or the purchaser's successor, shall deliver a property deed without warranty to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

Data Collection & Analysis

Annual Report Analysis

Every year, property tax lenders are required to submit annual reports summarizing their lending activity for the previous year. The submission deadline of the report was March 31, 2012. As of publication of this study, 89.47% of the required submissions have been received. Companies that fail to file reports are subject to administrative actions such as fines, license suspensions, and license revocations. Limitations of the data in this report include the exclusion of data and information from eight corporate entities that have not submitted reports as of May 25, 2012.

The information submitted by lenders is not audited or reviewed for accuracy by the OCCC; however, upon receipt of the information, the OCCC reviews it for reasonableness. The annual report analysis does not consider or account for the exclusion of

information from businesses that failed to file by required deadlines and face penalties or businesses that have ceased operations during the calendar year (CY).

A licensing requirement for property tax lenders has been in place since CY2008 and annual reports have been submitted during the spring of each year. These annual report filings provide information on the preceding years' activity. The data collected is categorized into three groups: loans made, loans receivable, and loan delinquency activity. Information for each of these categories is provided in the following narrative and data tables.

Loans Made

In 2012, data reported indicates a decline in the number of loans made by property tax lenders. The number of property tax loans made has yet to reach previous years' levels, however approximately

10.5% of the industry has yet to report data and similar or comparable levels to previous years may be reported once all data has been received.

Although the number of loans made appears to have declined, the dollar amount loaned and the average loan amount increased by 15.34% and 38.15% respectively from the CY2010 figures. This increase in average loan amounts continues an observed trend seen during each annual data collection analysis.

Loans Receivable

The reported dollar value of property tax loan receivables has grown 92.66% since data collection began in CY2008; however, currently, there has only been a small change between reported amounts from CY2010 and CY2011.

Delinquency and Collections

Reported foreclosures, while steadily increasing, represent a small percentage of activity in relation to loan volume. The 204 foreclosed properties represent 1.6% of loans made and 0.7% of loans receivable for CY2011.

Accounts that were 90 or more days delinquent at year-end, increased slightly reporting in at 6.4% higher than CY2010 delinquencies. The dollar amount of delinquent accounts rose 16.08%, representing \$64,934,185 in loans that were contractually more than 90 days delinquent.

Property tax lending data for CY2008 through CY2011 is presented in Table 8.

LOANS MADE	CY2011	CY2010	CY2009	CY2008
Property Tax Loans	12,731	15,249	15,700	13,731
Dollar Amount Loaned	\$222,947,713	\$193,292,891	\$167,942,361	\$132,699,045
Average Loan Amount	\$17,512	\$12,676	\$10,697	\$9,664
LOANS RECEIVABLE	CY2011	CY2010	CY2009	CY2008
Property Tax Loans	30,630	30,794	26,027	18,717
Amount Receivable	\$343,322,607	\$338,000,262	\$262,021,744	\$178,198,345
Average Receivable	\$11,208	\$10,976	\$10,067	\$9,521
DELINQUENCY & COLLECTIONS	CY2011	CY2010	CY2009	CY2008
Property Tax Foreclosures	204	152	112	99
Balance Foreclosed	\$2,595,549	\$2,938,041	\$1,661,492	\$1,460,007
Average Balance	\$12,723	\$19,329	\$14,835	\$14,748
Property Sales				
Average Proceeds	\$18,292	\$27,788	\$22,099	\$30,267
Delinquent 90+ Days	5,911	5,552	5,305	3,819
Loan Balances	\$64,934,185	\$55,937,709	\$51,349,663	\$34,824,270

Number of companies reporting 68^c 73 61 44

Table 8: Property Tax Lending Data CY2008 through CY2011.

^cBased on total population of 76 entities of which eight have not yet reported.

Questionnaire Methodology

The data for the study was designed to be collected in two parts. The first part being a questionnaire distributed to the entire licensee base as an addendum to the annual report filing. Information included in the questionnaire was identified as being readily available on most lenders' information systems without too much intrusion on the business. The benefits of using the questionnaire format was the possibility of obtaining a census of data while limiting the resources expended on collection efforts.

Questionnaire Design

Loan information was collected from lender submitted data as part of the required annual report. The data encompassed average interest rate, closing costs, transfer amounts, other costs required to obtain a transfer, and designation of property type, all segmented by year. Annual report data is unaudited by the OCCC but checked for reasonableness as it is received.

Data reported from each licensee was then aggregated and compiled to analyze fee trends over

time. Industry interest rate averages and relationships between closing costs and transfer amounts were specifically studied.

The same data limitations that affected the annual report affected the questionnaire. By the time of report publication, 66 of 76 corporate entities had completed the additional questionnaire portion of the annual report; however, two of those entities who submitted annual report data had submitted invalid questionnaire data. The following section represents valid data reported through the questionnaire portion of the study.

The chart shown in Figure 1 reflects the makeup of the total loan population for each year. The majority of the loans are made for residential properties. The biggest increase in loans made occurred from years 2008 to 2009. However, only data from the initial property tax lender licensing requirement date (March 1, 2008) was included. Detailed information on average loan amounts, costs, and interest rates are provided in Figures 2 through 11.

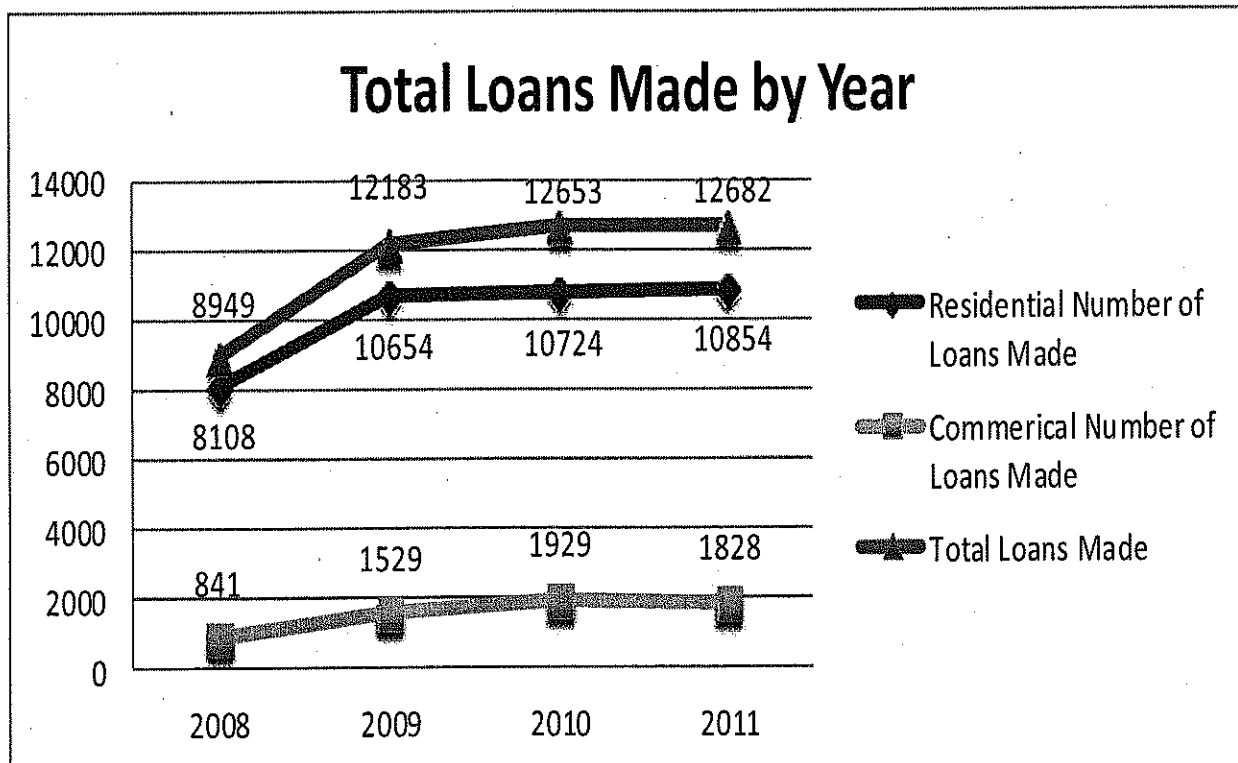


Figure 1: Total property tax loans made by year CY2008 through CY2011.

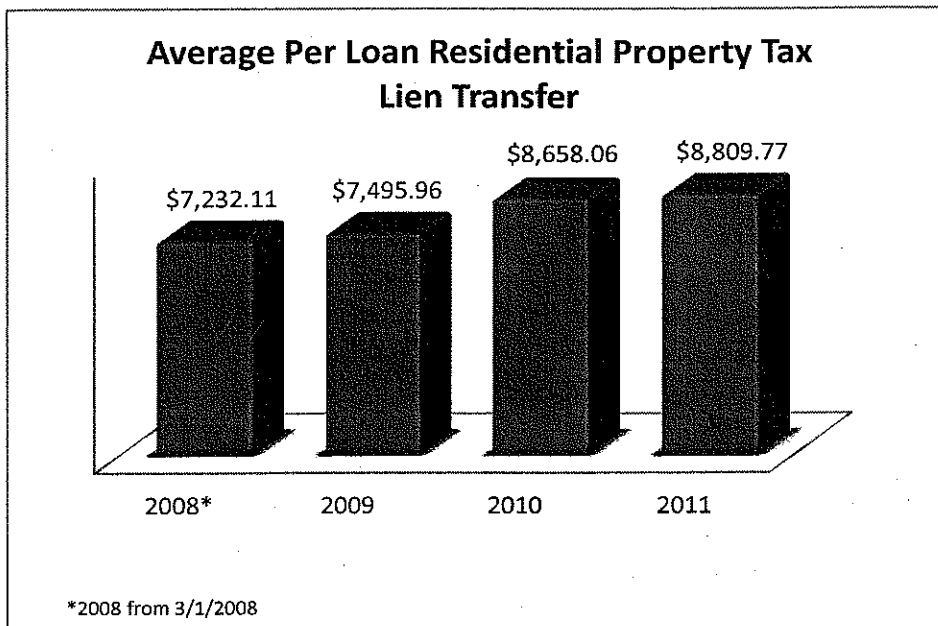


Figure 2: The average residential property tax lien transfer amount by calendar year. A property tax loan may include tax liens from multiple years in the same tax lien loan. The four-year upward trend appears nominal and may indicate only a yearly increase in taxable value.

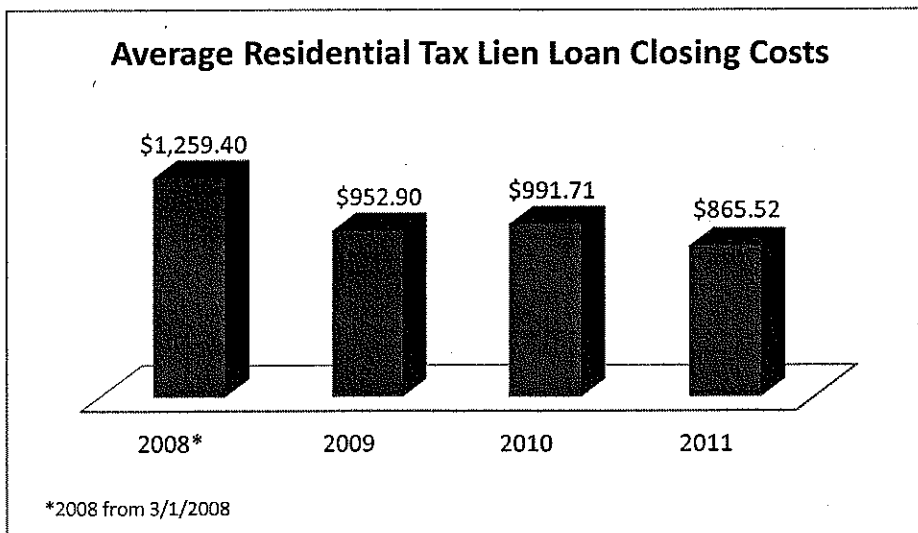


Figure 3: The average closing costs charged to a borrower in a property tax lien transfer for a residential property by calendar year. Closing costs have trended downward significantly since CY2008, confirming anecdotal evidence that competition has driven fees downward.

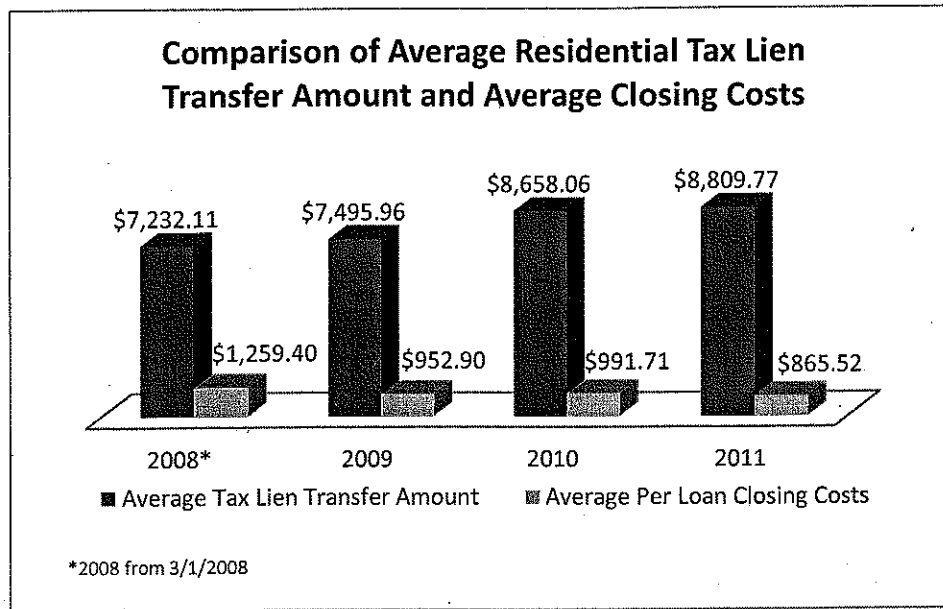


Figure 4: Comparison of average residential property tax lien transfer amount to the average tax lien loan closing costs for each calendar year. As the average residential tax lien transfer amount has increased, closing costs for those same loans have declined.

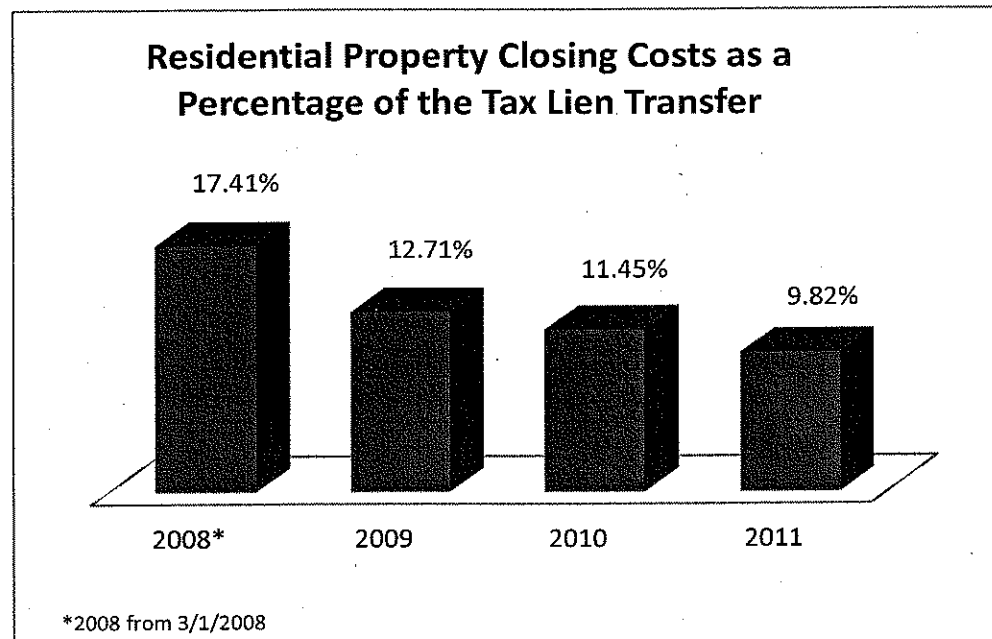


Figure 5: Relationship between the average residential tax lien transfer closing costs to the average tax lien transfer amount expressed as a percentage for each calendar year. The above further illustrates the shrinking of closing costs relative to the size of the tax lien transfer amount.

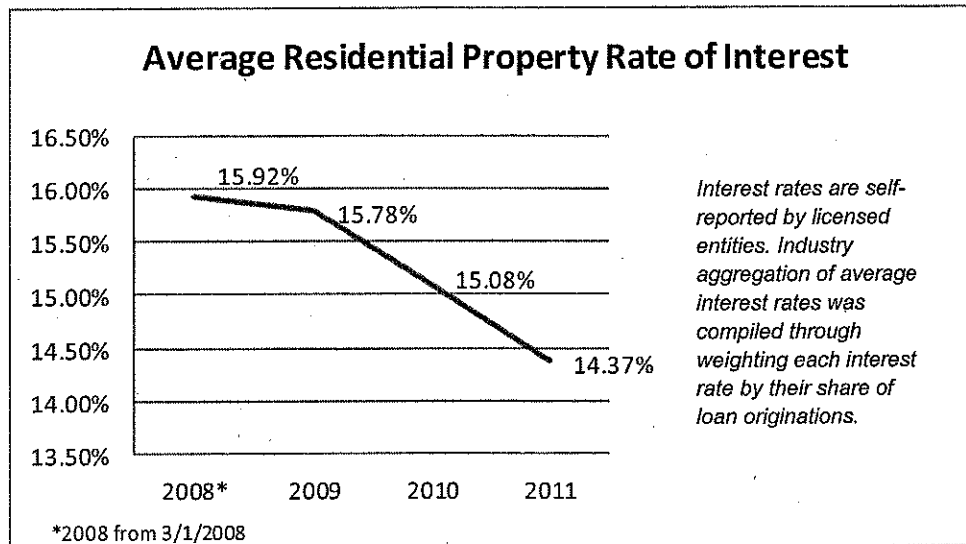


Figure 6: Average interest rate for residential property tax lien loans for each calendar year. Interest rates have declined. This provides additional confirmation of anecdotal evidence rates are declining.

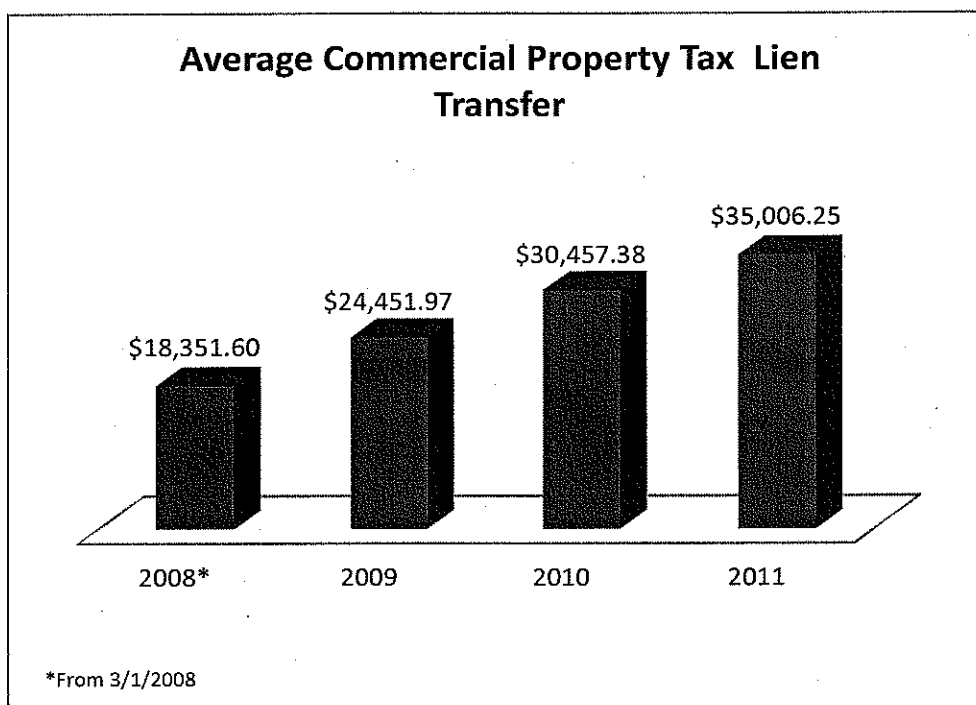


Figure 7: Average commercial property tax lien transfer amount by calendar year. A property tax lien loan may include tax liens from multiple years in the same tax lien loan. The year-over-year increase in commercial loans is substantially higher than the increase in residential properties and may reflect economic trends.

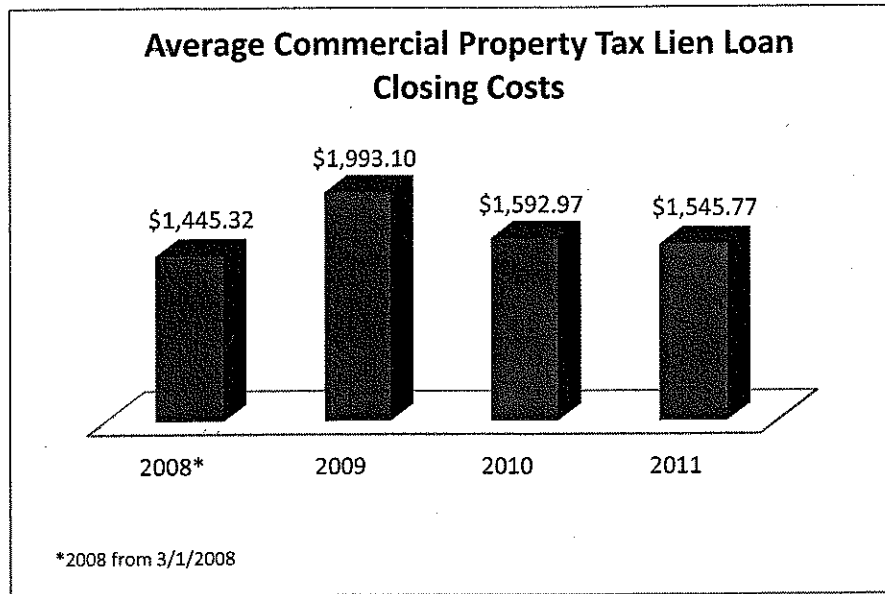


Figure 8: Average closing costs charged to a borrower in a property tax lien loan for a commercial property by calendar year. Although a sharp increase in closing costs for commercial properties occurred in 2009, following years have seen a significant drop. The relative flatness in commercial property transaction closing costs from CY2010 to CY2011 does not reflect the near 15% increase in the average tax lien transfer amount for the same period.

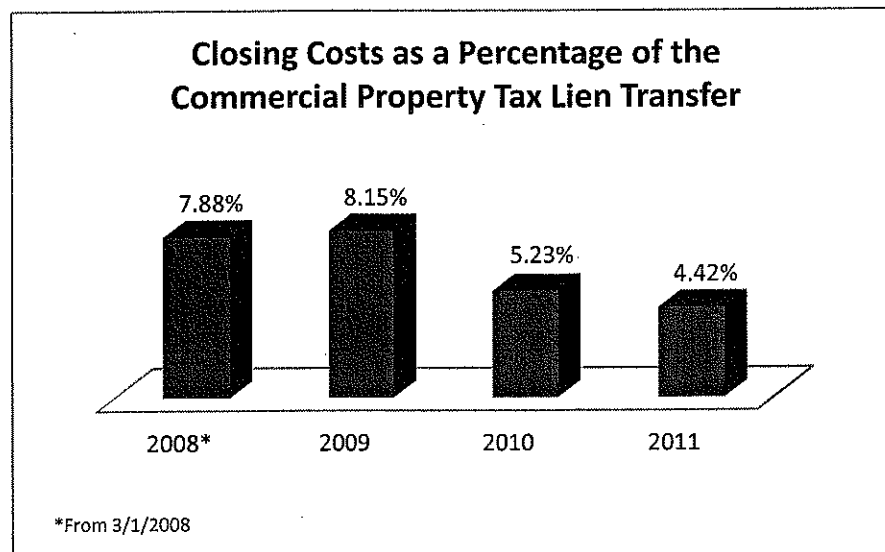


Figure 9: Relationship between the average commercial tax lien loan closing costs to the average tax lien transfer amount expressed as a percentage for each calendar year. The above illustrates the declining cost of obtaining the loan since CY2009.

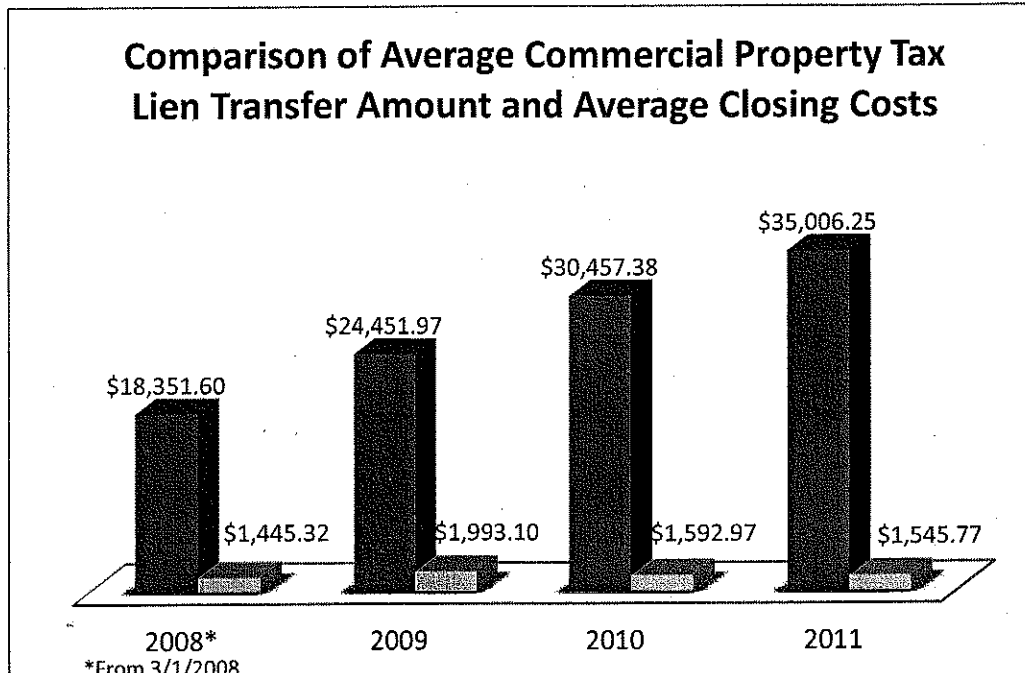


Figure 10: Comparison of average commercial property tax lien transfer amounts to the average tax lien loan closing costs for each year. The above illustrates the shrinking of closing costs relative to the average commercial property tax lien transfer amount.

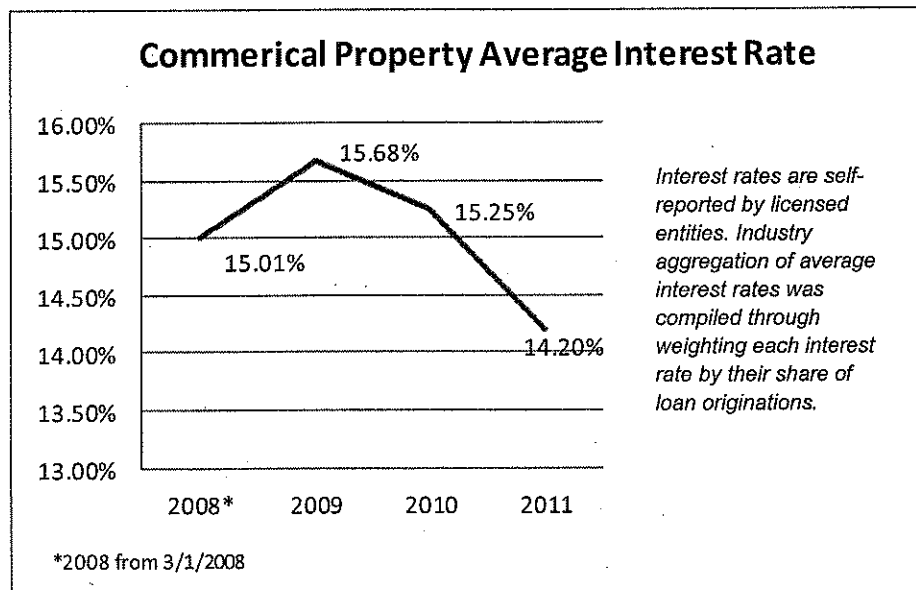


Figure 11: Average commercial property tax lien loan interest rate for each calendar year. Despite the increase in the average interest rate from CY2008 to CY2009, commercial property tax lien loan interest rates have declined significantly since CY2009.

Survey Methodology

Costs not included with information collected from the annual report questionnaire were designed to be collected as part of a random sampling of loans. The costs to be collected were identified as or servicing costs. Servicing costs are not present on all loans and are generally dependent on the paying habits of the borrower. These costs are not able to be observed and recorded without the labor of reviewing detailed transaction histories and loan documents. Field observations by OCCC examiners were required to record the types and amounts of servicing fees for the second part of the study.

The combination of the two study parts attempts to analyze the impact and trends of origination year, paying habits of the borrower, and effects of legislation on the costs assessed to borrowers who obtain property tax loans.

Survey Design

Servicing fees were segmented into related broad categories based on the purpose of the fee. This allowed for the easier assignment of fees to a category and aided with the speed of recording the fees. Categories were subdivided up to similarity of purpose for the fee and by whom the fee was retained (i.e. lender or third-party). The approach also took into account fees specifically authorized by the 82nd Texas Legislature effective September 1, 2011. Fees that could not be placed into one authorized category were recorded as fees no longer permissible under current law.

This portion of the study was viewed to not be influenced by transaction year as was the questionnaire. Servicing fees are assessed depending on the payment habits of the borrowers and can be assessed at multiple periods during the loan's term. Sampling frames were devised based on paying habits of borrowers to categorize fees.

Sampling Approach

Property tax lenders with significant levels of reported loan originations were observed. Lenders that did not originate 25 or more loans in one of the reporting years (2008-2010) or were no longer in

business were excluded. Under those parameters, a total of 36 companies were included in the survey.

To achieve an accurate capture of servicing fees, three separate sampling frames were selected. Loans were segmented into frames by delinquency status to approximate the accrual of fees tied to servicing costs. The three frames were defined as:

1. **Non-Problem Loans:** Loans that were originated after or active as of March 1, 2008, that were never more than 90 days past due, the property owner had not filed for bankruptcy protection, and the property was never posted for foreclosure sale.
2. **Problem Loans:** Loans that were originated after or active as of March 1, 2008, that were more than 90 days past due or the property owner had filed for bankruptcy protection, but the property was never posted for foreclosure sale.
3. **Foreclosure Loans:** Loans that had been posted for foreclosure sale after March 1, 2008.

A sample size totaling 979 property tax loans was initially deemed sufficient to characterize the population of loans being sampled with a 95 percent confidence level and a confidence interval of +/- 5% for each sampling frame. The number of loans sampled at each lender was proportional to its share of all loans originated by the property tax lending industry during CY2008 through CY2010. After oversampling to account for variations in population estimates, the following observations from each frame were studied.

Type	Sample Size	Population
Non Problem	391	30,513
Problem	385	11,234
Foreclosure	311	2,184
Total	1,087	43,931

Table 9: Total population and sample size used to conduct the Property Tax Lien Lending Study, 2012.

Additional loan characteristics including property type, year made, pre-existing mortgage, account status (current or paid-in-full) were recorded but not separately sampled for during the survey.

Data Collection Process

The survey portion of the study required onsite data collection by field examiners. This work was incorporated into regularly scheduled compliance examinations to conserve resources and to ensure privacy of proprietary information. Each sampled loan was systematically reviewed for information found on several different loan documents and loan servicing records. Examiners used one survey instrument to record the information for 20 data fields for each loan. The data was then compiled and analyzed once all surveys were completed.

Survey collection lasted for three months, beginning on a trial basis on February 13, 2012 and concluding on May 12, 2012. During the initial collection periods, feedback was received from field staff and the survey instrument was evaluated for needed modifications. Training was administered to nine field examiners on March 1, 2012.

To determine the sample, an examiner requested a list of loans from each sampling frame from the respective property tax lender. A random number generator was used to select a random start point on each sampling frame loan list. The sampling interval was determined by dividing the number of loans on the list by the pre-determined weighted sample for the licensee. After the interval and starting point were determined, the examiner created the selected sample list from which to record data for the survey. This survey sample list was then provided to the property tax lender to assemble the borrower's file and associated servicing records for examiner review.

Survey Data

The survey portion of the study focused on recording data relating to servicing fees. The following table represents the observed data segmented by property type. Field staff identified whether the property was owner occupied or non-owner occupied through an examination of transaction files including credit applications, deeds of trust, and other documents.

	Count ^d	Minimum	Average	Maximum
Tax Lien Transfer Amount				
Owner Occupied	867	\$ 507.70	\$ 7,773.41	\$138,076.78
Non-Owner Occupied	220	\$1,093.26	\$17,706.93	\$144,941.59
Third-Party Bankruptcy Fees				
Owner Occupied	73	\$ 5.36	\$ 768.66	\$ 2,446.00
Non-Owner Occupied	16	\$ 250.00	\$1,407.01	\$ 11,020.00

Table continues to next page

^d Because the sampling frames influenced the type of loans sample an overall generalization about percentage of loans containing the fees should not be made.

	Count ^e	Minimum	Average	Maximum
Third-Party Foreclosure Costs				
Owner Occupied	317	\$13.84	\$1,415.97	\$9,040.84
Non-Owner Occupied	73	\$75.00	\$2,154.58	\$23,324.75
Internal Collection Fees				
Owner Occupied	630	\$ 2.88	\$ 202.25	\$ 2,273.43
Non-Owner Occupied	152	\$ 2.61	\$ 295.61	\$ 4,231.39
Internal Administrative Fees				
Owner Occupied	154	\$ 3.00	\$ 92.10	\$ 420.00
Non-Owner Occupied	36	\$10.00	\$ 124.81	\$ 1,225.91
Third-Party Other Costs and Fees				
Owner Occupied	271	\$10.00	\$ 357.24	\$ 2,126.02
Non-Owner Occupied	65	\$54.12	\$ 310.83	\$ 2,354.00
Other Fees - No Longer Permissible				
Owner Occupied	385	\$ 3.89	\$ 307.17	\$ 4,175.01
Non-Owner Occupied	85	\$ 0.94	\$ 231.16	\$ 2,456.80
Total Post Closing Fees & Costs				
Owner Occupied	723	\$ 3.61	\$1,192.15	\$10,648.44
Non-Owner Occupied	182	\$ 2.84	\$1,478.43	\$23,827.23

Table 10: Servicing fees segmented by property type; includes only loans containing applicable fees.

^e Because the sampling frames influenced the type of loans sample an overall generalization about percentage of loans containing the fees should not be made.

The following section presents information tables about fee types associated with each respective sampling frame. Unlike the preceding table, fees are not segmented by property type (owner occupied or non-owner occupied). The unique sampling frames produced a disproportionate weighting. Problem and foreclosure loans were more heavily weighted in the survey. Therefore, a disproportionate number of problem and foreclosure were reviewed as part of the total survey. The weighting of each sample type in comparison to the overall weighting of the industry is represented in Table 11.

Delinquent (problem and foreclosure loans) made up over 64% of loans included in the survey. Based on the design of the survey, an analysis of the percentage of loans containing a specific fee was not made in this study. Where appropriate, the

Type	Survey Sample ⁶	Total Industry ⁷
Non-Problem	35.97%	69.46%
Problem	35.42%	25.57%
Foreclosure	28.61%	4.97%

Table 11: Weighting of sample types in comparison to overall weighting of the industry.

average and median fee amount for a specific fee type was reported as well as the percentage the total dollar amount of each fee category made up the total servicing fees.

The shaded area in each of the following tables indicates that the ratio of all surveyed loans with a specific charge could not accurately be reported (i.e. percentage of loans with a bankruptcy fee). Since there were separate sampling frames, all property tax loans did not have an equal chance of being selected in the survey. A purposeful number of loans were randomly sampled to characterize specific fees. For example, focusing on problem loans made it possible to identify that 17.66% incurred bankruptcy fees with an average amount of \$921.06.

⁶ Percentage of each sampling frame as compared to total sample size.

⁷ Percentage of each sampling frame as compared to total sample of loans requested and as reported by each surveyed company.

Third-Party Bankruptcy Costs and Fees

Table 12 presents information about bankruptcy fees relating to attorney's fees and court costs. Bankruptcy fees are limited in scope to the cost incurred by the property tax lender as it relates to a borrower's voluntary bankruptcy petition filing.¹⁶ The filing of a bankruptcy petition was a condition that classified a loan as a problem loan in the selected sampling frames. For this reason, bankruptcy fees appear most common in the problem loan sample.

Bankruptcy Fee Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Foreclosure Loans
Percentage of Loans with Bankruptcy Fees		0.00%	17.66%	6.75%
Of loans with Bankruptcy Fees ¹⁷				
Average Fee ¹⁸	\$883.42	\$0.00	\$921.06	\$761.54
Median Fee	\$750.00	\$0.00	\$750.00	\$500.52
As a percentage of Total Fees	6.96%	0.00%	19.10%	2.17%

Table 12: Third-Party Bankruptcy Costs & Fees.

Third-Party Foreclosure Costs and Fees

Table 13 (on the following page) presents information about third party foreclosure costs and fees. Foreclosure fees are affected by the amount of legal work required and how far along the loan is in the foreclosure process. Foreclosure expenses are limited to reasonable expenses for work necessary in a foreclosure proceeding. This chart excluded portions of charges that would no longer be allowable after Senate Bill 762.

Foreclosure related expenses affected a small amount of the non-problem loan sample but represented 21.62% of all fees assessed on that sample. One loan with high third-party foreclosure

costs disproportionately affected the average fee for the non-problem loan sample.

Over 25% of the problem loan sample was assessed fees for work beginning on the foreclosure process before being posted for foreclosure. The median fee of \$750.00 indicates that a small number of expensive foreclosure fees contributed to average fee of \$1,061.94 for this sample.

Foreclosure costs and fees represent the majority of expenses for loans ultimately posted for foreclosure sale. The median fee of \$1,355.80 is the highest of all sampling frames indicating substantial additional

Foreclosure Fee Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Foreclosure Loans
Percentage of Loans with Foreclosure Fees		2.05%	25.71%	91.00%
Of loans with Foreclosure Costs and Fees				
Average Fee	\$1,554.22	\$1,785.44	\$1,061.94	\$1,719.89
Median Fee	\$1,200.00	\$590.70	\$750.00	\$1,355.80
As a percentage of Total Fees	53.64%	21.62%	32.05%	66.14%

Table 13: Third-Party Foreclosure Costs & Fees.

costs are needed to complete the foreclosure process compared to the other loan samples that were assumedly in earlier stages of the foreclosure process. The foreclosure loan sample required the posting of a sale for a foreclosed property to be included in the sampling of those types of loans.

Internal Collection Fees

Table 14 presents information about internal collection fees which include late charges and NSF fees.

The total internal collection fees assessed on a loan is affected by the length of the loan; as the number of payment periods increases the risk of a late charge associated with a payment also increases. Late charges are limited after Senate Bill 762 revisions to the Texas Finance Code and are based on a percentage of the amount of the scheduled payment. NSF check fees are limited to \$30.00 per occurrence.¹⁹ This chart excludes portions of charges that are no longer allowable after the passage of Senate Bill 762.

Internal Collection Fee Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Foreclosure Loans
Percentage of Loans with Internal Collection Fees		50.64%	81.30%	87.14%
Of loans with Internal Collection Fees				
Average Fee	\$220.40	\$95.88	\$207.60	\$326.15
Median Fee	\$123.13	\$48.15	\$119.70	\$219.45
As a percentage of Total Fees	15.22%	28.73%	19.81%	11.96%

Table 14: Internal Collection Fees.

Internal collection fees were the most commonly assessed type of fee for the loans sampled. It was the only fee found on the majority of non-problem loans appearing at an occurrence rate of 50.64%. Internal collection fees represent the most significant cost to borrowers retained by the property tax lender. The total cost and frequency of the charge is dictated by the paying habits of the borrower.

Internal Administrative Fees

Table 15 presents information about internal administrative fees which include balance information fees, request of document fees, release of lien fees, and pre-payment penalties. Release of lien fees are only applicable to loans that are paid-in-full, while pre-payment fees are only allowable for commercial properties.

Internal administrative fees represent the smallest cost as a percentage of all fees for the surveyed loans. Under current law, fees that fall into this category and the internal collection cost category

Internal Administrative Fee Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Fore-closure Loans
Percentage of Loans with Internal Administrative Fees		9.72%	14.81%	30.55%
Of loans with Internal Administrative Fees				
Average Fee				
Median Fee	\$98.30	\$85.89	\$93.19	\$106.33
	\$105.00	\$104.00	\$104.00	\$110.00
As a percentage of Total Fees	1.54%	4.94%	1.62%	1.37%

Table 15: Internal Administrative Fees

are the only fees allowed to be retained by the lender for servicing loans. This chart excluded

charges or portions of charges that are no longer allowable after passage of Senate Bill 762 in 2011.

Third-Party Other Costs and Fees

Other allowable costs and fees paid to third parties were grouped together and represented in Table 16.

Other Costs and Fees Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Fore-closure Loans
Percentage of Loans with Other Costs and Fees		19.69%	38.18%	36.01%
Of loans with Other Costs and Fees				
Average Fee				
Median Fee	\$348.26	\$284.18	\$379.71	\$351.04
	\$255.00	\$212.00	\$330.00	\$293.86
As a percentage of Total Fees	10.36%	33.11%	17.02%	5.34%

Table 16: Third-Party Other Costs & Fees

These fees included additional amounts paid after closing for recording fees, title examination fees, and collateral protection insurance. The entirety of the fee must be paid to a third party. Charges became more prevalent on the problem and foreclosure samples as title examination work generally increases for non-performing loans. The lender must determine if there are any mortgage holders on the property to send all the required notices, such as

- The 90-day delinquency letter
- Notice to cure letter
- Notice of intent to accelerate
- Notice of acceleration
- Any additional notices

Third-party other costs and fees such as insurance and recording fees represent the largest percentage of total servicing fees for non-problem loans included in this survey. This chart excluded portions of charges that would no longer be allowable after Senate Bill 762.

Fees No Longer Permissible

The 82nd Texas Legislature limited servicing fees that may be charged in connection with property tax loans. Through the design of this study, all loans regardless of year were treated as if the servicing limitations were in effect. Any fee or portion of a fee that is no longer authorized was recorded under the no longer permissible category. This included internal demand, payment processing fees, delinquent account fees, account re-instatement fees, the amount of NSF fee in excess of \$30, and late charges that exceeded the amount authorized based on the percentage of payment. Other less common charges were judged on a transaction level basis for permissibility. Foreclosure loans were assessed the highest average fees and were most likely to contain fees that are no longer permissible.

Fees No Longer Permissible Characteristic	All Loans Surveyed	Non-Problem Loans	Problem Loans	Foreclosure Loans
Percentage of Loans with Fees No Longer Permissible		21.74%	44.42%	68.81%
Of loans with Fees No Longer Permissible				
Average Fee	\$293.42	\$90.09	\$197.92	\$450.50
Median Fee	\$165.38	\$41.64	\$114.91	\$314.73
As a percentage of Total Fees	12.20%	11.59%	10.32%	13.10%

Table 17: Fees No Longer Permissible.

Total Servicing Fees

The table on the following page (Table 18) presents information about loans with any servicing fees. The majority of all loans were assessed additional servicing fees in each sampling frame. The best performing loans (non-problem loans) in the study had additional charges averaging \$274.16 with a median fee of \$132.00 found on 61.64% of the non-problem loans.

Total Servicing Fees Characteristic	Non-Problem Loans	Problem Loans	Foreclosure Loans
Percentage of Loans with Servicing Fees	61.64%	92.21%	99.36%
Of loans with Post-Closing Fees			
Average Fee	\$274.16	\$923.92	\$2,384.91
Median Fee	\$132.00	\$551.67	\$2,060.33

Table 18: Total Servicing Fees.

Account Status

Additional categorizing information was included in the survey data tool. Loans were examined whether they were still active or paid-in-full. The following breakdown of loans was provided by field examiners:

Status	Number	Percentage
Active	742	68.26%
Unknown ⁸	43	3.96%
Paid-in-Full	302	27.78%

Table 19: Status of total loans represented by volume and percentage of total industry loans made.

Information regarding who paid off property tax loans was recorded in the sample when available. Of the 302 loans surveyed that were paid off, a subordinate mortgagor of the property paid 130 times, followed by 113 instances where the property tax lender did not keep sufficient records to determine who paid, and 59 instances where the borrower paid the loan (Figure 12).

⁸ Loans that were not identified as active or paid-in-full.

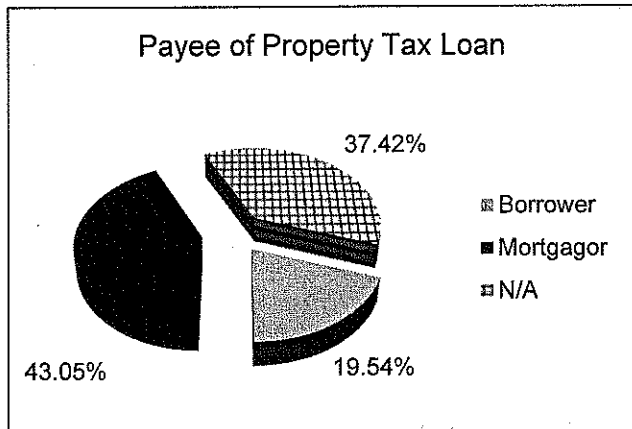


Figure 12: This chart displays the percentage of property tax loans that were paid off by the borrower or the borrower's mortgage company.

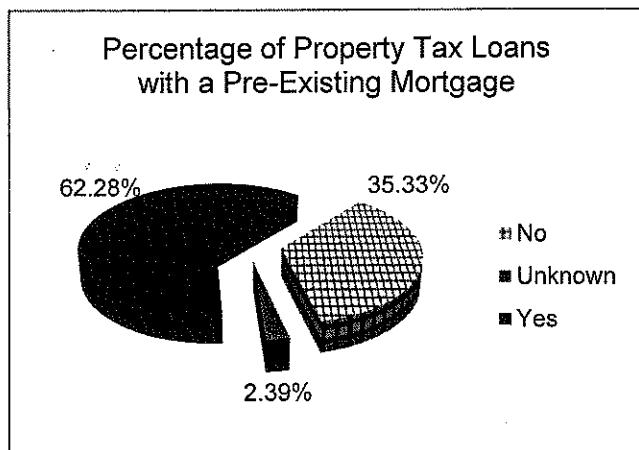


Figure 13: This chart represents the percentage of property tax loans in which the property owner had a pre-existing mortgage (first lien) as recorded in the onsite field examiner survey. Property tax lenders are subject to requirements for notification of a pre-existing first lien holders or mortgage servicers after receipt of the certified statement attesting to transfer of tax lien²⁰ as well as notification when a property owner is delinquent at least 90 consecutive days.²¹

As part of the survey, examiners reviewed the records of the property tax lenders for information regarding borrower income (i.e. applications, pay stubs, etc.). The survey determined that 64.8% of the reviewed property tax loans contained some information regarding the income of borrowers. The remaining 35.2% of the reviewed loans did not contain any indications that any borrower income information was obtained or reviewed.

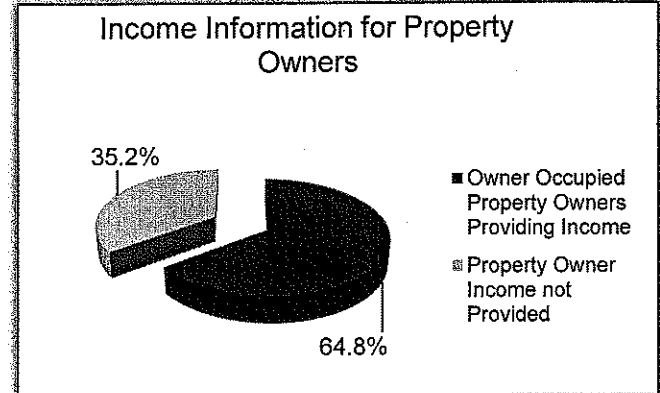


Figure 14: This chart reflects the percentage of owner occupied properties whose owners provided personal income.

Limitations of the Study

Limitations encountered in preparation for and completion of both the onsite examiner review of files for the study (survey) and the written questionnaire included: understanding of loan status definitions by licensees and lenders, limitations of servicing platforms, and inconsistent recordkeeping.

In defining loan categories, foreclosure loans were the most problematic. For example, a loan may be considered by a property tax lender to be in a "foreclosure" status at a determined point in time at one licensee yet not at another. To clarify, it was determined that for the study, a "foreclosure" would be any loan ever posted for sale at the courthouse.

Historical annual report data was used to determine total sample sizes. Because many of the property tax lenders have been originating loans for a short period of time and did not have specific or uniform policies and procedures regarding foreclosures, annual reports provided limited foreclosure data. A decision was made to define the parameters of the foreclosure sample in a manner that would broaden the number of businesses that would have "foreclosure" loans. However, once current data was requested in preparation for onsite examiner study, the population of foreclosures increased significantly. Sample sizes had to be adjusted during the course of the survey field work.

Further, it was found that there were differences in servicing platforms from one company to another, and from one year to another, even those using software from the same vendor. Many lenders did not purchase or subscribe to all software modules such as credit underwriting or credit reporting. This often hindered a lender's ability to conduct effective

data mining and provide requested data for this study that may be considered routine in other forms of lending. Furthermore, lenders changed servicing platforms more frequently than expected and several different systems had to be used to reconcile fees assessed at different periods of times. Often, when a system conversion occurred, prior loan data was limited or lost.

Many servicing platforms contained more than one account level record. For example, at the account level, a payment history is one record that may be limited to recording only borrower payments. A sublevel record may include additional transaction specifics such as a breakdown of principal, interest, late, and NSF fees. Yet, another sublevel record may provide other fees and charges assessed and collected. Some platforms revealed assessed fees only upon collection of the fee (e.g. accrued but unpaid late fees for prior payments recognized en masse upon payoff). In other words, late fees, NSF fees, and other charges and fees might only be captured in detail in a sub-register/ledger that would reference either manually or automatically in the computation of payoffs and only the fees were collected upon pay out or refinance.

Inconsistencies with regard to the treatment of additional years' tax-lien transfers created issues with regard to the collection of data pertaining to each transfer. For example, some property tax lenders made a new and separate loan while others "modified" an existing loan to add an additional tax-lien transfer and associated closing costs to the existing loan balance.²²

Further complicating data gathering was that some property tax lenders ship severely delinquent loan files to an outside attorney who assumes servicing through the cure or foreclosure. Some foreclosure process records were maintained by the attorney and not forwarded to the property tax lender.

It was also found that general recordkeeping was inconsistent at many companies making it difficult to substantiate and categorize charges. Efforts to standardize recordkeeping were made through administrative rulemaking. Although recordkeeping changes were not effective for most loans surveyed, future benefits are anticipated.

Because of these limitations, non-sampling errors have most probably occurred and the possibility

exists that, at times, not all fees were captured in the study, or fees recorded may not be defined and properly categorized. However, data collection that occurred in this study provides an understanding of the costs, fees, and charges assessed to borrowers in connection with property tax loan. It is believed that purposeful data collection was achieved in this study.

Summary and Recommendations

Annual report information suggests that property tax loan growth is stabilizing and fewer companies are entering the market than in the past. These indications signal that the industry is maturing. Data collected in the study suggests that market forces and sensible regulation have driven down the interest rates and closing costs of property tax loans. With proper disclosures, borrowers are able to shop for the lowest costs.

On the majority of each type of property tax loan sampled, servicing fees were found and the number of servicing fees and total dollar amount will be monitored through field examinations for compliance with statutes and administrative rules. In most cases, servicing fees are largely avoidable by the borrower making complete, adequate, and prompt payments on the property tax loans.

With the enactment of Senate Bill 762, the 82nd Texas Legislature established statutory changes that have moved the property tax loan process towards fee transparency and standardization, regarding the permissibility of servicing fees. The effect of the statutory changes was too recent to appropriately be analyzed for this study. As the servicing fees that a property tax lender may assess, charge, or collect from the borrower are limited, the property tax lenders must either:

1. absorb the cost of these now unauthorized servicing fees; or
2. increase the interest rates and closing costs assessed, charged and collected on future property tax loans to offset the new restriction on servicing fees.

Consequently, the current trend of declining interest rates and closing costs on property tax loans may stabilize or even begin to increase if lenders were previously reliant on servicing fees.

Equally concerning was the number of property tax loans entering into the beginning stages of foreclosure. This was evidenced by the number of loans with some level of foreclosure fees. While the completion of the foreclosure process and subsequent property sale is still relatively rare,

changes in activity should be monitored in subsequent examinations and reports.

This report does not make legislative recommendations regarding the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with property tax loans. However, based upon the findings of this report, it is recommended that the regulatory process closely monitor the property tax lending industry. The Finance Commission appreciates the opportunity to report to the Texas Legislature on issues impacting the property tax loan industry.

Endnotes

- ¹ Texas Property Tax Assistance Property Classification guide Reports of Property Value. Texas Comptroller of Public Accounts, Publication #96-313, Revised March 2011.
- ² Texas Property Tax Assistance Property Classification guide Reports of Property Value. Texas Comptroller of Public Accounts, Publication #96-313, Revised March 2011.
- ³ Section 33.01(a) of the Texas Tax Code
- ⁴ Section 33.01(c) of the Texas Tax Code
- ⁵ Texas Comptroller of Public Accounts 2012 Property Tax Basics, Chapter 5, Page 29
- ⁶ Texas Comptroller of Public Accounts 2012 Property Tax Basics 5.3.2
- ⁷ Section 31.03 of the Texas Tax Code
- ⁸ Section 31.031 of the Texas Tax Code
- ⁹ Section 33.02 of the Texas Tax Code
- ¹⁰ Section 31.072 of the Texas Tax Code
- ¹¹ Section 32.06(e-1) of the Texas Tax Code and Section 351.0021 of the Texas Finance Code
- ¹² Section 32.06(f-3) of the Texas Tax Code
- ¹³ 7 Texas Administrative Code §89.603
- ¹⁴ See Section 32.06(c) of the Texas Tax Code
- ¹⁵ Section 32.06(k) of the Texas Tax Code
- ¹⁶ *Texas Finance Code* §351.0021(a)(5)
- ¹⁷ Includes loans that are still open; additional fees may be assessed.
- ¹⁸ Average cumulative fees assessed per loan.
- ¹⁹ *Texas Business and Commerce Code* §3.506
- ²⁰ Texas Tax Code, §32.06(b-1)
- ²¹ Texas Tax Code, §32.06(f)
- ²² Loans that were modified to add additional taxes and not refinanced were treated as one continuous loan where taxes and fees were aggregated for comparison

Appendix A: Schedule J, Property Tax Lien Lender Annual Report

Schedule J: Additional Information for Property Tax Study

- **Line 1:** Report total number of loans originated during date range. A loan is either (a) a new loan to a new borrower, or (b) a loan made to an existing borrower for subsequent years' property taxes, whether the loan is a new loan or a renewal and extension of an existing loan.
- **Line 2:** Report in total for date range costs for which a property tax lender may charge, contract for, or receive fees in connection with closing a property tax loan. (Exclude prepaid interest charges from total).
- **Line 3:** Report in total for date range the total amount paid to the taxing units for taxes, penalties, interest, and legal fees, and court costs to certify the tax lien transfer during the date range.
- **Line 4:** Report in total for date range the total of all code compliance charges (mowing weeds, removing rubbish, or demolishing dangerous structures) or impact fees/assessments or other amounts paid by the tax lender to obtain a transfer not included in the Total Tax Lien Transfer amount.
- **Line 5:** Report in total for date range the average contract interest rate charged on principal loan balance of new loans made or renewed. Expressed as the mean of all note rates originated in the reporting year.

* Residential Property Tax Loans: Category A (Real Property: Single Family Residential), and homesteads designated as Category F (Real Property: Farm and Ranch Improvements) by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

*Non-Residential Property Tax Loans: Loans for properties that are not classified as Category A or Category F by the Property Classification Guide published by the Texas Comptroller of Public Accounts.



Calendar Year 2011

SCHEDULE J: Additional Information (For Property Tax Study)



Residential Property Tax Loans

	Mar 1 – Dec 31, 2008	Jan 1 – Dec 31, 2009	Jan 1 – Dec 31, 2010	Jan 1 – Dec 31, 2011
1. Number of Loans Made.....				
2. Total Closing Costs.....	\$ _____	\$ _____	\$ _____	\$ _____
3. Total Tax Lien Transfer Amounts...	\$ _____	\$ _____	\$ _____	\$ _____
4. Other charges required to obtain a release of tax lien.....	\$ _____	\$ _____	\$ _____	\$ _____
5. Average Interest Rate.....	_____ %	_____ %	_____ %	_____ %

Non-Residential Property Tax Loans

	Mar 1 – Dec 31, 2008	Jan 1 – Dec 31, 2009	Jan 1 – Dec 31, 2010	Jan 1 – Dec 31, 2011
1. Number of Loans Made.....				
2. Total Closing Costs.....	\$ _____	\$ _____	\$ _____	\$ _____
3. Total Tax Lien Transfer Amounts...	\$ _____	\$ _____	\$ _____	\$ _____
4. Other charges required to obtain a release of tax lien.....	\$ _____	\$ _____	\$ _____	\$ _____
5. Average Interest Rate.....	_____ %	_____ %	_____ %	_____ %

Appendix B: Property Tax Lien Lender Data Collection Tool

Definitions:

*Owner Occupied Loans - residential property owned and used by the property owner for personal, family, or household purposes.

**Non-Owner Occupied Loans - Property not owned and used by the property owner for personal, family, or household purposes.

***Number of times a subsequent years taxes were advanced - Number of additional times (after the first set of delinquent taxes) subsequent years taxes were added to the current loan or refinanced into a new loan

Fee Legend					
(a) 3rd Party Bankruptcy Costs & Fees	(b) 3rd Party Foreclosure Costs and Fees	(c) Internal Collection Fees	(d) Internal Administrative Fees	(e) 3rd Party Other Costs and Fees	(f) Other Fees - no longer permissible under SB 762
Attorney Fees related to Bankruptcy filings	Attorney Fees related to foreclosure suit under Chapter 33	Late payment fees	Fees for providing a payoff statement	Recording fees for loan modification	subsequent year tax payments (outside 33.445 or 32.06)
Court Costs related to Bankruptcy filings	Attorney Fees related to Rule 736 foreclosures	Non-sufficient funds fee	Prepayment penalty fees (commercial properties only)	Abstract and title examination fees	Internal demand letters
	Attorney Fees related to non-judicial foreclosures		Document copy fees	Collateral protection insurance costs	90 day mortgage notice fees
	Court costs related to foreclosures		Release of lien fee		Loan modification fees with no new taxes advanced
			Loan balance information fee		Payment processing fees reinstatement fees

Property Address	Zip Code	Property Type	Sample Type	Account Status	Pre-Existing Mortgage	Paid off by Borrower or Mortgagee	Borrower's State Income (if recorded by licensee)	Date of the Loan	Total Tax Lien Transfer	Total Costs Paid at Closing	Number of times a subsequent taxes were advanced	Contract Rate	APR	(a) 1st Party Bankruptcy Costs & Fees	(b) 2nd Party Foreclosure Costs and Fees	(c) Internal Collection Fees	(d) Internal Administrative Fees	(e) 3rd Party Other Costs and Fees	(f) Other Fees not longer permissible under SF 762	(g) Total Post-Closing Fees & Costs (g = a+b+c+d+e+f)
								MM/DD/YYYY						\$	\$	\$	\$	\$	\$	\$0.00
								MM/DD/YYYY						\$	\$	\$	\$	\$	\$	\$0.00
								MM/DD/YYYY						\$	\$	\$	\$	\$	\$	\$0.00
								MM/DD/YYYY						\$	\$	\$	\$	\$	\$	\$0.00
								MM/DD/YYYY						\$	\$	\$	\$	\$	\$	\$0.00

ETHICS POLICY

STATUTE

Section 572.051, GOVERNMENT CODE, STANDARDS OF CONDUCT; STATE AGENCY ETHICS

- (a) A state officer or employee should not:
- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
 - (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
 - (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
 - (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
 - (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

- (b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.
- (c) Each state agency shall:
 - (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
 - (2) distribute a copy of the ethics policy and this subchapter to:
 - (A) each new employee not later than the third business day after the date the person begins employment with the agency; and
 - (B) each new officer not later than the third business day after the date the person qualifies for office.
- (d) The office of the attorney general shall develop, in coordination with the commission¹, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.
- (e) Subchapters E and F, Chapter 571², do not apply to a violation of this section.

¹ In this Section 572.051, Texas Government Code, the term "commission" means the Texas Ethics Commission.

² Subchapters E and F, Chapter 571, Texas Government Code (made inapplicable to a violation of this Section) set out respectively the procedures (including hearings) for dealing with certain complaints by the Texas Ethics Commission and the institution by the Texas Ethics Commission of civil and enforcement procedures related to certain alleged violations of law.

- (f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

POLICY STATEMENT

I. OVERVIEW

Pursuant to Section 572.051(c) of the Texas Government Code, the Finance Commission of Texas ("Finance Commission") promulgates the following ethics policy. This ethics policy prescribes standards of conduct for all Finance Commission members. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. All Finance Commission members must familiarize themselves with this ethics policy. All Finance Commission members must abide by all applicable federal and Texas laws, administrative rules, and Finance Commission conduct policies, including this ethics policy. A Finance Commission member who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties.

II. ETHICS POLICY

A. A Finance Commission member shall not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member in the discharge of official duties, or that the member knows or should know is being offered with the intent to influence the member's official conduct;
- (2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;
- (3) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code Ann. Ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the member's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the member might reasonably expect would require or induce the member to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the member's official position;
- (4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the member's independence of judgment in the

performance of the member's official duties (Notwithstanding anything herein to the contrary, it is expected that members who are industry representatives will continue or accept employment that enables them to meet the qualifications required under Finance Code § 11.102, relating to Qualifications of Members of the Texas Finance Commission);

- (5) utilize state personnel, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state, interfere with the member's official duties, and interfere with Finance Commission functions;
- (6) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;
- (7) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or
- (8) utilize state resources for any political activity.

B. A Finance Commission member shall:

- (1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Finance Commission; and
- (2) pursuant to the STANDARDS OF CONDUCT policy, report any conduct or activity that the member believes to be in violation of this ethics policy to the Chair of the Finance Commission, the Chair of

the Audit Committee, and the Chair of the Strategic Planning Committee.

- C. Notwithstanding IIA and IIB above, it is specifically noted that pursuant to Texas Finance Code §11.102, the membership of the Finance Commission must consist of persons who are representatives of industries regulated by the Finance Commission thus providing industry-specific knowledge and expertise to the Finance Commission. Two members of the Finance Commission must be banking executives, one member of the Finance Commission must be a savings executive, one member of the Finance Commission must be a consumer credit executive, and one member of the Finance Commission must be a residential mortgage loan originator licensed under Chapter 156 or 157. Six members of the Finance Commission must be representatives of the general public. At least one of those members must be a certified public accountant. Routinely in the performance of their duties as members of the Finance Commission, industry-representative members are required to vote on rules and take other actions that will have an impact on the industry they represent. Therefore, such cases are not conflicts of interest under this policy. However, if there is to be action on a matter that is specific to the Finance Commission member's employer or to an institution in which the Finance Commission member has a substantial interest as described in Section 572.005, Texas Government Code, then the member must not participate in the action and shall recuse herself or himself from deliberating or voting on the matter.

Cross reference

Revise the first paragraph of the **Policy Statement** under STANDARD OF CONDUCT to read as follow:

Subchapter C, Chapter 572, Texas Government Code ~~TEXAS GOVERNMENT CODE~~, specifically addresses **Standards of Conduct and Conflict of Interest** for state officers and employees. Members of the finance commission are committed to following these guidelines and abiding by the provisions therein. Portions of the statute applicable to finance commission members are found in Exhibit A. Pursuant to Section 572.051, ~~Pursuant to Section 572.051,~~ Texas Government Code the finance commission and each of the agencies under its jurisdiction has adopted an ethics policy.